

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

John Carlos DiPetrillo,
Stacy Lynn DiPetrillo,
JCD Landscaping & Erosion Control,

Debtors.

BKY File No. 04-44186 RJK

**NOTICE OF HEARING AND MOTION FOR RELIEF
FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Reynold C. Dittrich (hereinafter "Movant"), by his undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 14, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel, in Courtroom 8W of the above entitled Court located at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3 Any response to this motion must filed and delivered not later than October 7, 2004 which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or served and filed by mail not later than October 4, 2004, which is ten days before the time set for the hearing (including Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a

core proceeding. The petition commencing this case was filed on July 28, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$39,700.00, as evidenced by that mortgage note dated February 4, 2003, copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated February 4, 2003, executed by John C. DiPetrillo and Stacy L. DiPetrillo, husband and wife, recorded on February 24, 2003, as Document No. 834386, a copy of which is attached hereto as Exhibit "B." The name and address of the original creditor is contained in the attached Exhibit "B." The property is located in Wright County, Minnesota and is legally described as follows to-wit:

That part of Government Lot 1 of Section 10, Township 120, Range 27, described as follows: Commencing at the northwest corner of said Government Lot 1; thence east along the north line of said Government Lot 1, a distance of 1047.86 feet to the actual point of beginning; thence continue east along said north line, a distance of 300.00 feet, thence south, deflecting 90 degrees right, a distance of 895.00 feet more or less to the shoreline of Albion Lake; thence northwesterly along said shoreline, a distance of 301.00 feet more or less to a line drawn south at a right angle to the north line of said Government Lot 1 from the point of beginning; thence north along said line, a distance of 876.00 feet more or less to the point of beginning, Wright County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 1, 2004, Debtor is delinquent in the making of post-petition monthly payments as required and is in default in an amount in excess of \$39,029.93. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$380,000.00 subject to Secured Creditor's mortgage in excess of \$39,029.93. The property is also subject to a mortgage in favor of Mortgage Electronic Registration Systems, Inc., by its serving agent Litton Loan Servicing, LP in excess of \$288,653.25. The property is also subject to a third mortgage in favor of E-Cap Investments, Inc. in excess of \$21,000.00. Considering selling costs of 10%, Debtor has no equity in the property. Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to

permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated: September 20, 2004

MANSFIELD, TANICK & COHEN, P.A.

By: /s/ Jamie R. Pierce

Thomas G. Wallrich (213354)
Jamie R. Pierce (305054)
1700 Pillsbury Center South
220 South Sixth Street
Minneapolis, MN 55402-4511
Tel: (612) 339-4295

VERIFICATION

I, Reynold C. Dittrich, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 20, 2004


Reynold C. Dittrich

#357573 1

MORTGAGE NOTE

February 4th, 20 03

Bloomington, Minnesota

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay

Reynold C. Dittrich, Trustee UDT July 29, 1996 FBO Reynold C. Dittrich

sum of THIRTY-NINE THOUSAND SEVEN HUNDRED DOLLARS AND NO/100
DOLLARS(\$39,700.00)----- Dollars, with the interest on the unpaid principal balance from
February 4th, 20 03, until paid at the rate of 9.99% percent per annum.

Principal and interest shall be payable at:

Reynold C. Dittrich, Trustee

1038 Kilburn Street, St. Paul, MN 55103

-----, or such other
place as the Note holder may designate, in consecutive monthly installments of FOUR HUNDRED
SEVENTY-FIVE DOLLARS AND NO/100 DOLLARS(\$475.00)-----, on the 15th day of each
month beginning March 15th, 20 03. Such monthly installments shall continue until the entire
indebtedness evidenced by this Note is fully paid, shall be due and payable on August 15th, 20 08.

If any monthly installment under this Note is not paid when due and remains unpaid after a date
specified by a Notice to Borrower, the entire principal amount outstanding and accrued interest
thereon shall at once become due and payable at the option of the Note holder. The date specified
shall not be less than thirty days from the date such notice is mailed. The Note holder may exercise
this option to accelerate during any default by Borrower regardless of any prior forbearance. If suit
is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and
expenses of suit, including, but not limited to reasonable attorney's fees.

Borrower shall pay to the Note holder a late charge of 5.00 per cent of any monthly installment
not received by the Note holder within 10 days after the installment is due.

Borrower may prepay the principal amount outstanding in whole or in part. The Note holder may
require that any partial prepayment (1) be made on the date monthly installments are due and (2) be in
the amount of that part of one or more monthly installments which would be applicable to principal.
Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone
the due date of any subsequent monthly installments or change the amount of such installments, unless
the Note holder shall otherwise agree in writing.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors
and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties,
guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified
mail addressed to Borrower at the Property Address stated below, or to such other address as
Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given
by mailing such notice by certified mail, return receipt requested, to the Note holder at the address
stated in the first paragraph of this Note, or at such other address as may have been designated by
notice to Borrower.

The indebtedness evidenced by this Note is secured by a Mortgage, dated this 4th day of
February, 20 03, and reference is made to the Mortgage for rights as to acceleration
of the indebtedness evidenced by this Note.

8787 W. 50th Street

Annandale, MN 55302

property address

John C. DiPetrillo
John C. DiPetrillo

Stacy L. DiPetrillo
Stacy L. DiPetrillo

EXHIBIT

A

FOR VALUE RECEIVED, _____

HEREBY ASSIGNS AND TRANSFERS THE WITHIN NOTE TOGETHER WITH ALL

_____ RIGHT, TITLE AND INTEREST IN AND TO THE MORTGAGE DEED SECURING

THE SAME, TO _____

WITHOUT RECOURSE

_____, A. D. 20 _____

Minnesota Uniform Conveyancing Blanks (Rev. 3-86)

Individual to Individual

834386

OFFICE OF COUNTY RECORDER
WRIGHT COUNTY, MINNESOTA
CERTIFIED FILED
AND INDEXED ON

03 FEB 24 PM 2:01

Ag Preservation Land Fee Receipt # 136237Registration Tax Receipt # 147956, in the
amount of \$ 91.31, has been paid this
Date: Feb 24, Year: 2003

Douglas M. Gruber, Auditor/Treasurer

By J. J. J. J., clerk

MORTGAGE REGISTRY TAX DUE HEREON:

\$91.31\$20.00 CK # 4117
(reserved for recording data) JKTHIS INDENTURE, Made on this 4th day of February, 2003,

(Date)

between John C. DiPetrillo and Stacy L. DiPetrillo, husband and wifeMortgagor (whether one or more), and Reynold C. Dittich, Trustee UDT July 29, 1996 FBO Reynold C. Dittich

Mortgagee, (whether one ore more),

WITNESSETH, That Mortgagor, in consideration of the sum of THIRTY-NINE THOUSAND SEVEN
HUNDRED DOLLARS AND NO/100 DOLLARS(\$39,700.00)DOLLARS, to Mortgagor in hand paid by Mortgagee, the receipt whereof is hereby acknowledged, does hereby
convey unto Mortgagee, forever, real property, in Wright
County, Minnesota, described as follows:

Long Legal - See attached "Exhibit A"

Abstract Property

Property Address: 8787 W. 50th Street
Annandale, MN 55302Mortgagor(s) shall pay to the Mortgagee(s) a late charge of 5.0 percent of any monthly installment not received
by the mortgagee(s) within 10 days after the installment is due, including final balloon payment (if any).

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to the Mortgagee forever. The Mortgagor covenants with Mortgagee as follows: That
Mortgagor is lawfully seized of the property and has good right to convey the same; that the Property is free from all encumbrances, except
as follows:that Mortgagee shall quietly enjoy and possess the same; and that Mortgagor will Warrant and Defend the title to the same against all lawful
claims not hereinbefore specifically exceptedPROVIDED, NEVERTHELESS, That Mortgagor shall pay to Mortgagee the sum of THIRTY-NINE THOUSAND SEVEN
HUNDRED DOLLARS AND NO/100 DOLLARS(\$39,700.00)DOLLARS, according to the terms of a promissory note of even date herewith (the Note), the final payment being due and payable on
August 15th, 2008, with interest at the rate of 9.990 percent per annum, and shall repay to Mortgagee, at the times and
with interest as specified, all the sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property, insurance
premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums
advanced for any other purpose authorized herein, and shall keep and perform all the covenants and agreements herein contained, then this
Mortgage shall be null and void, and shall be released at Mortgagor's expense

AND THE MORTGAGOR covenants with the Mortgagee as follows:

- 1 to pay the principal sum of money and interest as specified in the Note;
- 2 to pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;
- 3 to keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of

the full amount of the indebtedness

at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a
federally designated flood prone area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood
insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor

WARNING: UNAUTHORIZED COPYING OF THIS FORM PROHIBITED.

EXHIBIT

B

tabbles

favor of the Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, the Mortgagor shall promptly give notice of such damage to the Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to the Mortgagee. The insurance policies shall provide for not less than ten days written notice to the Mortgagee before cancellation, non-renewal, termination, or change in coverage, and the Mortgagor shall deliver to the Mortgagee a duplicate original or certificate of such insurance policies;

4. to pay when due both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;
5. to commit or permit no waste on the Property and to keep it in good repair;
6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and
7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage.

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorney's fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, the Mortgagee may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Property and be immediately due and payable from the Mortgagor to the Mortgagee and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, the Mortgagor confers upon the Mortgagee the option of declaring the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers the Mortgagee to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees the Mortgagor herein agrees to pay.

The Mortgagor and the Mortgagee further covenant and agree as follows:

1. Mortgagor shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.
2. Upon default of any covenant or agreement by Mortgagor under the terms of the Note or this Mortgage, Mortgagee prior to foreclosure shall mail notice to Mortgagor as provided herein specifying: (a) the nature of the default by the Mortgagor; (b) the action required to cure such default; (c) a date, not less than thirty (30) days from the date the notice is mailed to Mortgagor by which such default must be cured; and (d) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of the Mortgagor to acceleration and sale.
3. In addition to any notice required under applicable law to be given in another manner, (a) any notice to the Mortgagor provided for in this Mortgage shall be given by mail in such notice by certified mail addressed to the Mortgagor at the Property address or at such other address as the Mortgagor may designate by notice in writing to the Mortgagee as provided herein, and (b) any notice to the Mortgagee shall be given by certified mail, return receipt requested, to Mortgagee at the following address:

Reynold C. Dittich, Trustee

1038 Kilburn Street, St. Paul, MN 55103

or to such other address as Mortgagee may designate by notice in writing to the Mortgagor as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Mortgagor or Mortgagee when given in the manner designated herein.

The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

IN TESTIMONY WHEREOF, hereunto set its hand the day and year first above written.

MORTGAGOR

John C. DiPetrillo

Stacy L. DiPetrillo

STATE OF MINNESOTA

COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me on this 4th day of February, 2003

Date

by John C. DiPetrillo and Stacy L. DiPetrillo, husband and wife

Linda J. Nutting
SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

RETURN TO Env
MIDWEST BROKERS, INC.
Real Estate Sales and Investments
Since 1971
9100 W. Bloomington Freeway, Suite #123
Bloomington, MN 55431

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK):



LINDA J. NUTTING
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2006

FAILURE TO RECORD OR FILE THIS MORTGAGE
MAY GIVE OTHER PARTIES PRIORITY OVER THIS MORTGAGE

Form No. 41-1/2-M — Page 3 Legal Description

"Exhibit A"

That part of Government Lot 1 of Section 10, Township 120, Range 27, described as follows: Commencing at the northwest corner of said Government Lot 1; thence east along the north line of said Government Lot 1, a distance of 1047.86 feet to the actual point of beginning; thence continue east along said north line, a distance of 300.00 feet; thence south, deflecting 90 degrees right, a distance of 895.00 feet more or less to the shoreline of Albion Lake; thence northwesterly along said shoreline, a distance of 301.00 feet more or less to a line drawn south at a right angle to the north line of said Government Lot 1 from the point of beginning; thence north along said line, a distance of 876.00 feet more or less to the point of beginning, Wright County, Minnesota.

Abstract Property

Property Address: 8787 50th Street NW
Annandale, MN 55302

834386

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

John Carlos DiPetrillo,
Stacy Lynn DiPetrillo,
JCD Landscaping & Erosion Control,

Debtors.

BKY File No. 04-44186 RJK

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

Reynold C. Dittrich, (“Secured Creditor or Movant”) submits this Memorandum in Support of his Motion for Relief from Stay.

FACTS

Movant refers to the facts stated in his Notice of Hearing and Motion for Relief from Stay and incorporates the same herein.

ARGUMENT

CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 1, 2004, Debtor is delinquent for post-petition monthly payments as required and is in default in the amount of \$39,029.93.
2. Debtor has failed to make any offer of adequate protection.

3. Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y, 1993) and In re Davis, 64 B.R. 358 (Bankr. S.D.N.Y. 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362 (d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: September 20, 2004

MANSFIELD, TANICK & COHEN, P.A.

By: /e/ Jamie R. Pierce

Thomas G. Wallrich (213354)
Jamie R. Pierce (305054)
1700 Pillsbury Center South
220 South Sixth Street
Minneapolis, MN 55402-4511
Tel: (612) 339-4295

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

John Carlos DiPetrillo,
Stacy Lynn DiPetrillo,
JCD Landscaping & Erosion Control,

Debtor.

BKY Case No. 04-44186 RJK

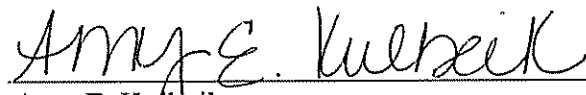
PROOF OF SERVICE

Amy E. Kulbeik states that she is an employee of Mansfield Tanick & Cohen, P.A., and in the course of said employment, on the date indicated below, she served the following:

1. Notice of Hearing and Motion for Relief from Stay;
2. Memorandum in Support of Motion for Relief from Stay; and
3. Order.

upon the parties on the attached service list by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail; and that she certifies the foregoing under penalty of perjury.

Dated: September 20, 2004


Amy E. Kulbeik

SERVICE LIST

**JOHN CARLOS DIPETRILLO, JCD LANDSCAPING & EROSION CONTROL, AND
STACY LYNN DIPETRILLO BANKRUPTCY
BKY NO: 04-44186 RJK**

John C. DiPetrillo
Stacy L. DiPetrillo
8787 West 5th Street N.W.
Annandale, MN 55302

Charles E. Raschke
P.O. Box 189
Howard Lake, MN 55349

Doraine A. Larison
1010 W. St. Germain Room 600
St. Cloud, MN 56301

U.S. Trustee
300 South 4th Street
Suite 1015
Minneapolis, MN 55415

E-Cap Investments, Inc.
P.O. Box 44884
Eden Prairie, MN 55344

Mortgage Electronic Registration Systems, Inc.
c/o James A. Geske
WILFORD & GESKE
7650 Currell Boulevard
Suite 300
Woodbury, MN 55125

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

John Carlos DiPetrillo,
Stacy Lynn DiPetrillo,
JCD Landscaping & Erosion Control,

Debtors.

BKY File No. 04-44186 RJK

ORDER

The above entitled matter came on for hearing upon motion of Reynold C. Dittrich (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 14, 2004, at U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed July 29, 1996, executed by John C. DiPetrillo and Stacy L. DiPetrillo, husband and wife, recorded on February 24, 2003, as Document No, 834386 covering real estate located in Wright County, Minnesota, legally described as follows, to wit:

That part of Government Lot 1 of Section 10, Township 120, Range 27, described as follows: Commencing at the northwest corner of said Government Lot 1; thence east along the north line of said Government Lot 1, a distance of 1047.86 feet to the actual point of beginning; thence continue east along said north line, a distance of 300.00 feet, thence south, deflecting 90 degrees right, a distance of 895.00 feet more or less to the shoreline of Albion Lake; thence northwesterly along said shoreline, a distance of 301.00 feet more or less to a line drawn south at a right angle to the north line of said Government Lot 1 from the point of beginning; thence north along said line, a distance of 876.00 feet more or less to the point of beginning, Wright County, Minnesota.

and may pursue its remedies under state law in connection with the subject note and mortgage deed. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Robert J. Kressel
Judge of Bankruptcy Court